



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2005

Ms. Luz E. Sandoval Walker
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2005-02140

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219944.

The El Paso Police Department (the "department") received a request for the requestor's personnel file. You state that you have provided the requestor with some of the requested information. However, you claim that a portion of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information includes a "Texas Peace Officer's Accident Report." Section 550.065(b) of the Transportation Code "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three pieces of information. Thus, pursuant to section 550.065, you must withhold the “Texas Peace Officer’s Accident Report” as information that is confidential by law.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, to the extent the submitted information contains any CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the department must withhold any such information under section 552.101 of the Government Code. We note, however, that DPS has the authority to release an individual’s own CHRI to that individual. Gov’t Code § 411.083(b)(3).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Although you raise section 58.007 of the Family Code for a portion of the submitted information, you have not indicated, and the documents do not reflect, how this information involves juveniles that are involved in delinquent conduct or conduct indicating a need for supervision. *See* Family Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

The department raises section 552.117 of the Government Code for portions of the submitted information. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 in electing for the confidentiality of such information. Gov’t Code § 552.117(a)(2). We note, however, that under section 552.023 of the Government Code a person or a person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. Gov’t Code § 552.023. Thus, the requestor has a special right of access to his own section 552.117 information.²

Section 552.130 excepts information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. The department must withhold the information we have marked under section 552.130 of the Government Code. We note that the requestor also has a special right of access under section 552.023 to his own driver’s license and motor vehicle information. *See* Gov’t Code § 552.023.

In summary, the department must withhold the marked “Texas Peace Officer’s Accident Report” pursuant to section 552.101 in conjunction with section 550.065. To the extent the submitted information contains any CHRI, the department must withhold that information under section 552.101 in conjunction with federal law. Finally, the department must

² As our ruling is dispositive, we need not address the department’s remaining arguments regarding this information.

withhold the marked Texas motor vehicle information under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

³ We note, however, that if the department receives another request for information from a different requestor, the department should again seek a decision from us before releasing this information to such a requestor. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Kleine". The signature is written in a cursive, flowing style.

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 219944

Enc. Submitted documents

c: Mr. Adrian Gonzalez
11216 War Feather
El Paso, Texas 79936
(w/o enclosures)